IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3068 OF 1992

Janardhan Ramchandra Narvekar ..Petitioner

versus

State of Maharashtra & Ors. ..Respondents

Mrs. V. V. Thorat for the Petitioner.

Mr. S. K. Chinchalikar AGP for the Respondents - State.

CORAM : D. G. DESHPANDE, J.

DATE : 4TH OCTOBER, 2006

ORAL ORDER :

1. Heard learned counsel for the petitioner and learned AGP for the Respondents - State.

2. The Petitioner has challenged by this petition the judgment and order dated 13.1.1988 of the Sub Divisional Officer Sawantwadi, which came to be confirmed by Resident Deputy Collector, Sindhudurg, Kudal by order dated 22.12.1988 and further confirmed by the order of the Additional Commissioner, Konkan Division, New Bombay by order

dated 26.5.1992. All the three Authorities below have held against the petitioner i.e. directing him to remove tea stall.

3. The main challenge of the petitioner to these orders is that he has been discriminated against others and no action is taken by the Government against others who have made similar encroachments. The second contention of the Counsel for the petitioner is that even if the State Government in its affidavit dated 9.9.1992 has stated that the tea stall of the petitioner is 3.05 meters from the centre of the Zilla Parishad Road, and which is contrary to the Building Regulation Rules and the structure cannot be regularised the petitioner had no opportunity to meet this case. Counsel for the petitioner, however, concedes that as per the time given by me to her on earlier occasion, she has given notice to to her client by registered post and she has acknowledgement with her but the client has not come to give her instructions.

4. The question is whether the encroachment of this type and which is clear from the affidavit of

the State that it is encroachment of the public road, it is an encroachment on the campus of the school i.e. Primary School known as Sharada Vidya Mandir, Malgaon. The State has clearly stated that all these chawls in the campus of the school are unauthorised, and, therefore the Authorities of the Zilla Parishad initiated action, which culminated in the passing of the three orders stated above.

5. Counsel for the petitioner also tried to contend that the petitioner has applied for regularisation which is permissible under the Maharashtra Land Revenue Manual - Vol. I, copy of which is also annexed to the petition.

6. The fact remains that firstly the petitioner has no right to carry on his business on the land of the school and secondly he is carrying on business without obtaining permission from the Authorities, thirdly his structure i.e. tea stall is at the distance of 3.05 meters from the centre of Zilla Parishad road, which is contrary to the Building Regulation Rules, and, fourthly, in the affidavit the State has clearly stated that the structure cannot be regularised at all.

7. So far as the submissions regarding discrimination against the petitioner alone is concerned, the Competent Authority should take action against all the persons involved but that cannot be a ground to protect the petitioner till then. In view of this, there is no merit in this petition. It is dismissed. Rule is discharged. Ad interim order stands vacated. No order as to costs.

8. The Competent Authorities to take action against all the owners of the stalls or persons doing business by causing encroachment on the aforesaid road as early as possible and in any case within a period of six months from today.

(D.G. DESHPANDE, J.)